# ARKANSAS SUPREME COURT

No. 05-642

NOT DESIGNATED FOR PUBLICATION

ARTHUR DALE TAYLOR
Appellant

v.

LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
Appellee

**Opinion Delivered June 15, 2006**

*PRO SE* APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY, CV 2003-950-5, HON. JOHN BERTRAN PLEGGE, JUDGE

AFFIRMED

**PER CURIAM**

In 1985, Arthur Dale Taylor was found guilty of first-degree murder and sentenced to life imprisonment as a habitual offender. We affirmed. *Taylor v. State*, 288 Ark. 456, 706 S.W.2d 384 (1986). Subsequently, appellant sought postconviction relief pursuant to Ark. R. Crim. P. 37.1 and pursuant to a petition for writ of *habeas corpus*. We affirmed denial of those petitions. *Taylor v. State*, CR 85-153 (Ark. February 1, 1988) (*per curiam*) and *Taylor v. State*, 98-702 (Ark. October 29, 1998) (*per curiam*), respectively.

In 2003, appellant, who is in the custody of the Arkansas Department of Correction, filed in the county where he was incarcerated a *pro se* petition for writ of *habeas corpus*. The trial court denied the petition, and appellant, proceeding *pro se*, has lodged this appeal of the order denying the petition.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146

S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

The basis for appellant's instant petition for writ of *habeas corpus* was exactly the same basis as his prior petition for writ of *habeas corpus*: the trial court lacked jurisdiction to sentence appellant as he had five prior felony convictions, but was sentenced pursuant to a statute addressing more than one but less than four prior felonies. In each instance, the trial court found that appellant's basis for a petition for writ of *habeas corpus* was groundless. We find no error and affirm the decision of the trial court.

A writ of *habeas corpus* is proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 577, 873 S.W.2d 524, 525 (1994). Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of *habeas corpus* should issue. *Friend v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (December 1, 2005) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. §16-112-103(a) (1987). *See also Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). However, a *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for direct appeal or a timely petition for postconviction relief. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (*per curiam*).

Here, appellant's interpretation of the application of our habitual offender statutes is flawed. Appellant does not dispute that the State proved that he had been convicted of five prior felonies,

but claims that the trial court had jurisdiction to sentence him under a certain section of the habitual offender sentencing statute only if he had fewer prior felony convictions. It misapplies our habitual offender sentencing scheme, and certainly defies logic, to conclude that a trial court is deprived of jurisdiction to sentence a defendant with a higher number of felony convictions under any circumstances, or that a defendant with a higher number of prior felony convictions is rewarded somehow in sentencing compared to a defendant with a lower number of prior felony convictions. Moreover, as correctly stated by the trial court, appellant had sufficient notice that he would be sentenced as a habitual offender, and if any irregularity existed as to appellant's sentencing, he waived it by failing to raise the issue at trial.

Appellant has failed to prove, once again, that the trial court lacked jurisdiction to enter the judgment, either from a subject-matter or personal-jurisdiction standpoint. Appellant also failed to prove that the judgment was invalid on its face. Thus, appellant did not establish any cause to conclude that a petition for writ of *habeas corpus* should issue.

Affirmed.